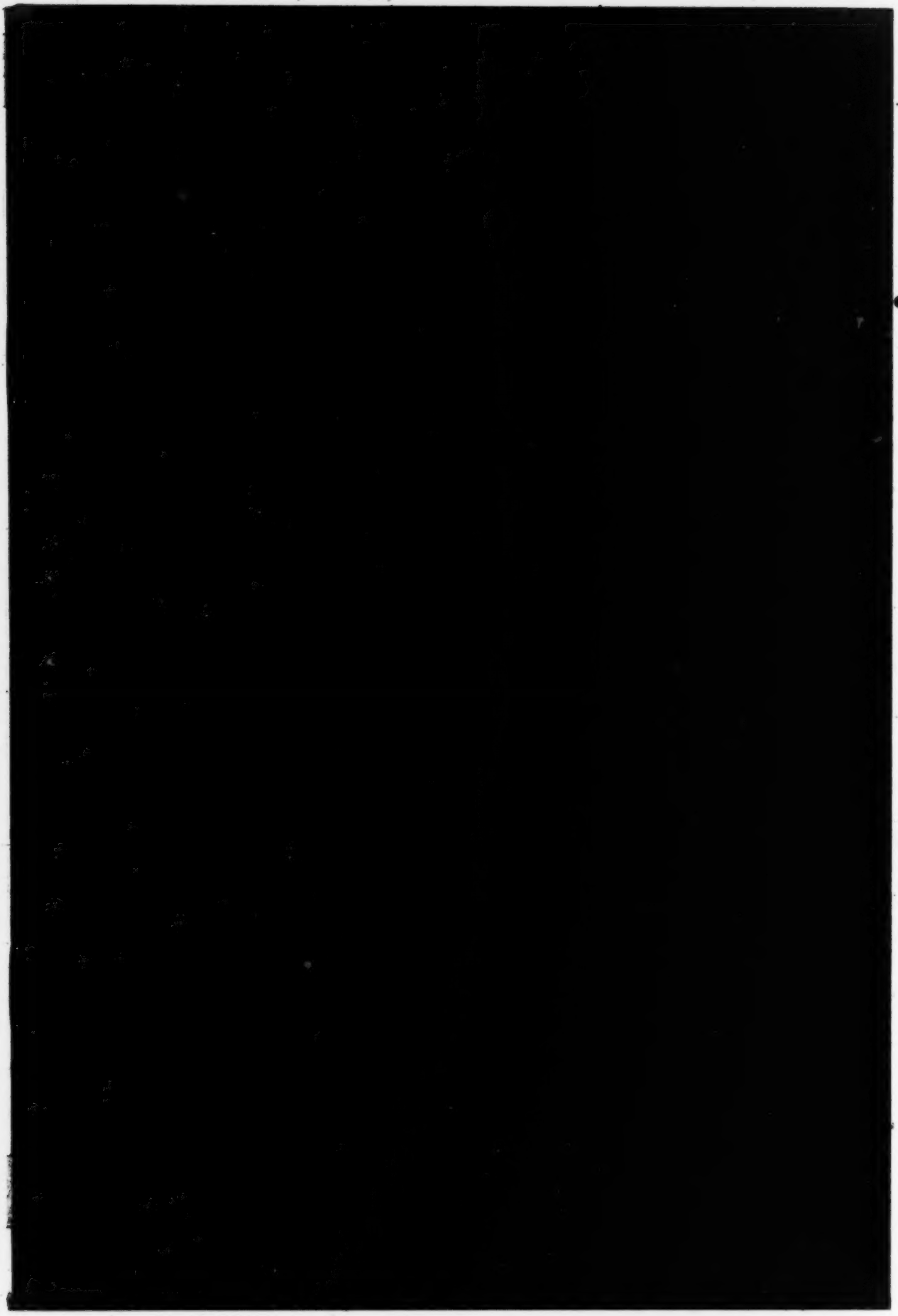

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 805

ELBERT M. D'AMICO, APPELLANT

v.

NATIONAL BROADCASTING COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MOTION OF UNITED STATES TO DISMISS

Appellee United States, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves to dismiss on the ground that there is no jurisdiction to consider the appeal to this Court from the judgment of the court of appeals. In the alternative, if the appeal papers should be treated as a petition for a writ of certiorari, the petition should be denied.

Appellant's complaint in the United States District Court for the District of Columbia was the subject of a motion for dismissal by the United States

by reason of failure to state a claim in accordance with the requirements of Rule 8(a), F.R.Civ.P. The district judge, after considering the above motion and similar motions of the other defendants, dismissed the complaint. The court of appeals, on September 1, 1966, upon motion of the United States and of appellee National Broadcasting Company, Inc., and on consideration of the original record on appeal, dismissed the appeal as frivolous.

Appellant's complaint consists of vague allegations that the appellees are using him for some unspecified experiment. He states that he has recently and repeatedly been confined in mental hospitals. His complaint asserts that various radio stations, perhaps with the connivance of State and federal officials, have sent signals into appellant's home to retrieve material he has written or intends to write in the future. He also complains that he has been refused copyrights for his unwritten material.

It is apparent that there is no jurisdiction of any appeal to this Court from the judgment of the court of appeals. In any event, appellant has presented no question which would warrant review and decision by this Court. It is therefore respectfully submitted that the appeal should be dismissed. Treating the appeal papers as a petition for certiorari, the writ should be denied.

THURGOOD MARSHALL,
Solicitor General.

DECEMBER 1966

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No. 805

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

ELBERT M. D'AMICO,
Appellant,

v.

NATIONAL BROADCASTING COMPANY, INC.,
UNITED STATES GOVERNMENT,
Appellees.

On Appeal from the United States Court of Appeals for the District of Columbia Circuit

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MOTION TO DISMISS OR AFFIRM

HOWARD MONDERER
Attorney for Appellee
National Broadcasting
Company, Inc.
1725 K Street, N. W.
Washington, D. C. 20006

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 805

ELBERT M. D'AMICO,
Appellant,

v.

NATIONAL BROADCASTING COMPANY, INC.,
UNITED STATES GOVERNMENT,
Appellees.

On Appeal from the United States Court of Appeals for the District of Columbia Circuit

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MOTION TO DISMISS OR AFFIRM

Appellee National Broadcasting Company, Inc. (hereinafter called "NBC") hereby moves to dismiss this appeal from the decision of the United States Court of Appeals for the District of Columbia Circuit in this proceeding, or to affirm that decision.

As was the case with the underlying complaint in this proceeding and the other principal documents filed by the appellant in the course of this proceeding, the contents of the Jurisdictional Statement filed by appellant are unin-

telligible, incoherent, redundant, frivolous and immaterial.*

No valid basis for appeal to this Court is cited by appellant—and indeed there is none. The appeal is neither within the jurisdiction of this Court nor taken in conformity with statute or the rules of this Court. In his "Eleventh Illustration" appellant cites Title 47 USCA Section 505 and Title 28 USCA Sections 1331 through 1356 as the statutory provisions conferring jurisdiction in this Court of this appeal. However, Title 47 USCA Section 505 deals only with the venue of trial of offenses under the Communications Act of 1934 as amended, and Title 28 USCA Sections 1331 through 1356 deal only with the jurisdiction of district courts of the United States, not of this Court. (In his Notice Of Appeal To The Supreme Court Of The United States, appellant cited Title 28 USCA Section 1252, but that is obviously inapplicable since there has been no decision in this case invalidating any Act of Congress.)

The complaint herein—asking damages of $100,000,000 based on an indecipherable cause of action—was dismissed by the District Court with leave to appellant to amend within 20 days "with the assistance of counsel if possible." However, appellant did not amend the complaint within the allotted time, choosing instead to appeal.

Both the District Court and the Court of Appeals specifically ruled that the appeal to the Court of Appeals was "frivolous" (Order of District Judge Oliver Gasch denying appellant's request for leave to appeal without posting security, entered May 26, 1966 (see 28 USCA Section 1915(a)); Order per curiam of Court of Ap-

* NBC knows of no action or omission to act by NBC which might give rise to any action against NBC by appellant. In fact, NBC knows nothing of appellant except that he has been going around the country acting as his own attorney and suing NBC for some unknown and incomprehensible reason.

peals filed September 1, 1966, dismissing the appeal). Similarly, the questions on which the decision of this cause depends are so insubstantial as not to need further argument.

It is therefore respectfully submitted that this Court should dismiss the appeal in this proceeding, or affirm the decision below.

Respectfully submitted,

HOWARD MONDERER
Attorney for Appellee
National Broadcasting
Company, Inc.
1725 K Street, N. W.
Washington, D. C. 20006

December 27, 1966

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing "Motion To Dismiss Or Affirm" has been made upon appellant by mailing a copy thereof to him, Elbert M. D'Amico, pro se, 215 Constitution Avenue, N. E., Washington, D. C.; and upon appellee United States of America by mailing a copy thereof to The Solicitor General, Department of Justice, Washington, D. C., and The Attorney General, Department of Justice, Washington, D. C., this 27th day of December, 1966.

HOWARD MONDERER